

STATE OF INDIANA)
)SS: IN THE TIPPECANOE SUPERIOR COURT 2
COUNTY OF TIPPECANOE) TO THE 2013 TERM

FILED

AUG 23 2013

CURTIS BEAVER
Plaintiff,
vs.

FIFTH THIRD BANK
Defendant.

Christa Coffey
Clerk Superior Court No. 2 Tippecanoe Co.

CAUSE NO. 79D02-1308-PL-00032

**COMPLAINT FOR DAMAGES PURSUANT TO THE
TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227 et seq. AND
THE INDIANA DECEPTIVE CONSUMER SALES ACT, Ind. Code § 24-5-0.5-1, et seq.**

Comes now the Plaintiff, CURTIS BEAVER (hereinafter "Plaintiff"), by counsel, Melissa Wilkes, and alleges that FIFTH THIRD BANK (hereinafter "Fifth Third") violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (hereinafter "TCPA") and the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 *et seq.* (hereinafter "IDCSA"), as follows:

PARTIES

1. Plaintiff is an individual citizen and resident of the State of Indiana, County of Tippecanoe, and City of Lafayette.
2. Defendant Fifth Third solicits and transacts business within the State of Indiana, County of Tippecanoe, and is headquartered at 111 Lyon N.W., Grand Rapids, MI 49503.
3. This Court has subject matter jurisdiction pursuant to 47 U.S.C. § 227(b)(3).

FACTUAL ALLEGATIONS

4. Plaintiff has a second mortgage (hereinafter "Account") with Fifth Third.
5. Within the last four (4) years, Plaintiff has received numerous collection calls from Fifth Third's agents and/or employees to his cellular telephone number in an attempt to collect upon the Account.

6. On June 28, 2013, at approximately 4:43 p.m., Plaintiff told a Fifth Third representative to stop calling his cellular number. Despite such request, Fifth Third continued autodialing Plaintiff's cellular number.

7. Upon information and belief, Defendant maintains business records that show all telephone calls placed to Plaintiff's cellular telephone number.

8. Plaintiff believes and alleges that during the aforementioned telephone calls, Defendant used an "automatic telephone dialing system" and/or "prerecorded voice" as prohibited by 47 U.S.C. § 227(b)(1)(A).

9. Plaintiff believes and alleges that during the aforementioned telephone calls, Defendant intended to use an "automatic telephone dialing system" and/or "prerecorded voice" as prohibited by 47 U.S.C. § 227(b)(1)(A).

10. Plaintiff believes and alleges that these telephone calls were not made for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

11. Plaintiff believes and alleges that he did not provide "express consent" allowing Defendant to place telephone calls to his cellular telephone number pursuant to 47 U.S.C. § 227(b)(1)(A).

12. The credit transaction that occurred between Plaintiff and Defendant is a "consumer transaction" as defined by I.C. § 24-5-0.5-2(a)(1).

13. Defendant is a "supplier" as defined by I.C. § 24-5-0.5.2(a)(3).

14. Defendant's conduct rose to the level of an "incurable deceptive act" as defined by I.C. § 24-5-0.5-2(a)(8).

**COUNT I: NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. § 227 et seq.**

15. Plaintiff incorporates the allegations contained in paragraphs 1 through 14 and further states as follows:

16. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TPCA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

17. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et seq.*, Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

**COUNT II: KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE
CONSUMER PROTECTION ACT, 47 U.S.C. § 227 *et seq.***

18. Plaintiff incorporates the allegations contained in paragraphs 1 through 17 and further states as follows:

19. Even though Defendant did not have consent to call Plaintiff's cellular telephone number and Plaintiff instructed Fifth Third to stop calling his cellular number, Fifth Third's agents and/or employees repeatedly continued to use an automatic telephone dialing system and/or an artificial or prerecorded voice to make and/or place telephone calls to Plaintiff's cellular telephone number.

20. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

21. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff is entitled to treble damages up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3).

**COUNT III: NEGLIGENT VIOLATION OF THE INDIANA DECEPTIVE CONSUMER
SALES ACT, Ind. Code § 24-5-0.5-1, et seq.**

22. Plaintiff incorporates the allegations contained in paragraphs 1 through 21 and further states as follows:

23. Each and every violation of the TCPA by Defendant constitutes a deceptive act, in violation of the IDCSEA, specifically Ind. Code § 24-5-0.5-1(a)(19).

24. As a result of Defendant's negligent violations of IDCSEA, Plaintiff is entitled to an award of \$500.00 in statutory damages, for each and every violation of the TCPA plus reasonable attorney fees, pursuant to Ind. Code § 24-5-0.5-4(a).

**COUNT IV: WILLFUL VIOLATION OF THE INDIANA DECEPTIVE CONSUMER
SALES ACT, Ind. Code § 24-5-0.5-1, et seq.**

25. Plaintiff incorporates the allegations contained in paragraphs 1 through 24 and further states as follows:

26. Even though Defendant knew that it did not have consent to call Plaintiff's cellular telephone number and Plaintiff instructed Fifth Third to stop calling his cellular number, Fifth Third's agents and/or employees repeatedly continued to use an automatic telephone dialing system and/or an artificial or prerecorded voice to make and/or place telephone calls to Plaintiff's cellular telephone number anyway, in violation of the TCPA and the IDCSEA.

27. As a result of Defendant's willful deceptive acts, Plaintiff is entitled to double statutory damages not exceeding \$1,000.00 for each and every violation of IDCSEA.

WHEREFORE, Plaintiff respectfully prays for judgment against the Defendant, as follows:

A. A judgment in the amount of \$500.00 for each and every violation cited herein plus any and all additional violations after the date of filing this Complaint, pursuant to 47 U.S.C. § 227(b)(3)(B);

B. Treble damages in the amount of \$1,500.00 for each and every violation cited herein plus any and all additional violations after the date of filing this Complaint, pursuant to 47 U.S.C. § 227(b)(3);

C. A judgment in the amount of \$500.00 for each and every violation cited herein plus any and all additional violations after the date of filing this Complaint, pursuant to Ind. Code § 24-5-0.5-4(a);

D. Double damages in the amount of \$1,000.00 for each and every violation cited herein plus any and all additional violations after the date of filing this Complaint, pursuant to Ind. Code § 24-5-0.5-4(a)(2);

E. All costs, fees and expenses incurred in this case, including reasonable attorney's fees, pursuant to Ind. Code § 24-5-0.5-4(a);


F. Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law; and

G. Such other relief as the Court deems just and proper.

Dated: 8/22/13

Respectfully submitted,

PEARLMAN, CHOSNEK & HOPSON, P.C.
Attorney for the Plaintiff

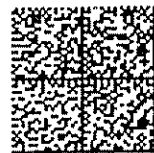
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